

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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Javier Card, :  
Petitioner, : No. 1:17-cv-00221 (FB)  
vs. :  
Thomas Griffin, Superintendent Green Haven :  
Correctional Facility, :  
Respondent. :  
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1. Petitioner Javier Card, by and through his counsel Daniel R. Perez, and Respondent Thomas Griffin, by and through his counsel Seth M. Lieberman, an Assistant District Attorney in the Kings County District Attorney's Office, file this Joint Motion for Entry of Consent Order. For the reasons stated herein, Petitioner and Respondent ask that the Court enter the Proposed Consent Order attached hereto as Exhibit A.

2. Petitioner Javier Card was convicted, under Kings County Indictment Number 5797/91, by a jury of: (1) one count of Murder in the Second Degree (N.Y. Penal Law § 125.25[1]); (2) one count of Reckless Endangerment in the First Degree (N.Y. Penal Law § 120.25); and (3) one count of Criminal Possession of a Weapon in the Second Degree (N.Y. Penal Law former § 265.03). Upon conviction, the trial court imposed a sentence of imprisonment of twenty-five years to life on the second-degree murder count, a consecutive sentence of imprisonment of one and two-third to five years on the reckless endangerment count and a concurrent sentence of imprisonment of five to fifteen years on the criminal weapon possession count.

3. Following appellate and other post-conviction proceedings before New York State courts, Petitioner filed the Petition for Writ of Habeas Corpus on Behalf of an Individual in State Custody (ECF No. 1) under 28 U.S.C. § 2254(a) on January 17, 2017. Petitioner subsequently filed the pending Amended Petition for Writ of Habeas Corpus on Behalf of an Individual in State Custody (the “Amended Petition”) (ECF No. 12) on May 10, 2017. In the Amended Petition, Petitioner alleges, *inter alia*, that he received ineffective assistance of counsel in connection with the plea negotiations prior to his 1995 trial. Respondent filed an opposition to the Amended Petition on March 2, 2018 (ECF No. 21) and Petitioner submitted a reply memorandum in further support of the Amended Petition on March 23, 2018 (ECF No. 22).<sup>1</sup>

4. By Memorandum and Order dated October 17, 2018 (ECF No. 25), the Court ordered an evidentiary hearing with respect to Petitioner’s claim that he received ineffective assistance of counsel in connection with the plea negotiations prior to his 1995 trial and denied the remaining claims set forth in the Amended Petition. *See* Memorandum and Order at 1, 3, 6. The Court determined that, pursuant to 28 U.S.C. § 2254(d)(2), the state court’s adjudication of Petitioner’s claim with respect to the plea negotiations did not preclude *habeas* relief. *See id.* at 5 (citing *Brumfield v. Cain*, 135 S. Ct. 2269 (2015)).

5. Petitioner and Respondent have now reached an agreement to resolve all issues, challenges, complaints and demands for relief associated with the Amended Petition. The terms of that agreement are set forth in the Proposed Consent Order (*see* Exhibit A).

6. Petitioner and Respondent respectfully request that Petitioner be produced at a time determined by the Court so that Petitioner and counsel for Petitioner may execute the Waiver of Appeal, attached hereto as Exhibit B, in open court.

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<sup>1</sup> Petitioner subsequently filed a corrected reply memorandum on April 12, 2018 (ECF No. 24).

7. Petitioner and Respondent agree that nothing in either this motion or any order entered by the Court pursuant to this motion may in any way be construed or interpreted as an admission, concession, or finding concerning the merits of Petitioner's Amended Petition.

## CONCLUSION

For the reasons stated herein, the parties respectfully request that the Court enter the Proposed Consent Order attached hereto as Exhibit A.

Dated: June 10, 2019

/s/ Daniel R. Perez  
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